



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/150260

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on July 18, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. Petitioner is diagnosed with Multiple Sclerosis (MS). She is 46 years old.
3. On December 19, 2012, the Petitioner filed an application for disability.
4. Petitioner works 40 hours/week as a bus driver.
5. On May 15, 2013, the agency denied the Petitioner's application finding she is not disabled.

DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of that term as it is used for SSI purposes. See, WI Stat § 49.47(4). The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will result in death, or will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of his/her medical condition, and their ability to return to vocationally relevant past work or adapt to new forms of employment are evaluated in that sequence. See 20, C.F.R. § 416.905 and § 416.920.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12 month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 C.F.R. § 416.920.
2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. § 416.920(c).
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 C.F.R. § 416.920(d).
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. 20 C.F.R. § 416.920(f).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual functional capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 C.F.R. § 416.920(f).

At the hearing, the Petitioner testified that she works full-time as a bus driver at the rate of \$8.00 per hour, 40 hours per week.

"Substantial Gainful Activity" (SGA) means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. 20 C.F.R. §§ 416.910 & 416.972.

Because the Petitioner has substantial gainful activity, she does not meet step one in the test for disability, and I need not go further in the sequence. She cannot be eligible for MA-Disability at this time, and her appeal must be dismissed.

I note that the Petitioner testified that her current employment is getting more difficult due to her symptoms. This decision does not prohibit the Petitioner from re-applying for disability if her current employment status changes due to her symptoms.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner is not currently disabled.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

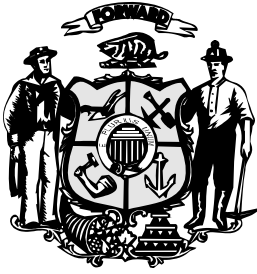
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of August, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 30, 2013.

Kenosha County Human Service Department
Disability Determination Bureau